

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of Developing a	)	
Unified Intercarrier Compensation	)	
Regime	)	
	)	
Petition for Declaratory Ruling of	)	CC Docket 01-92
T-Mobile USA, Inc., <u>et.al.</u>	)	
	)	
Petition of US LEC Corporation	)	
for Declaratory Ruling Regarding LEC	)	
Access Charges for CMRS Traffic	)	

**COMMENTS  
Of  
UNITED STATES CELLULAR CORPORATION**

United States Cellular Corporation ("USCC") hereby files its comments in support of the "Petition For Declaratory Ruling ("Petition") filed by T-Mobile USA, Inc.; Western Wireless Corporation; Nextel Communications and Nextel Partners ("Petitioners").<sup>1</sup>

The Petitioners, all of which are wireless carriers, demonstrate that the "wireless termination tariffs" filed by small incumbent local exchange carriers in Missouri and Nebraska are not an appropriate means of establishing reciprocal

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<sup>1</sup> USCC currently provides service to approximately 3.9 million customers in 44 MSA, 99 RSA, 1 MTA (PCS) markets. USCC's markets are predominantly rural, and USCC thus has a vital interest in FCC wireless/wireline interconnection policies affecting rural areas.

compensation arrangements for the transport and termination of wireless to wireline traffic under either the Communications Act or FCC's long standing LEC-CMRS interconnection policies.

I. The Petitioners Demonstrate That Such Tariffs Are Unlawful and Unfair

The Petition describes an attempt by certain small incumbent local exchange carriers (ILECs) in Missouri and Nebraska to file state tariffs purporting to impose "termination charges" for terminating wireless traffic.

As the Petitioners note, this practice contravenes 1987 and 1989 FCC orders which provide that ILECs cannot unilaterally impose interconnection charges on wireless carriers for local (intra-MTA) traffic.<sup>2</sup> In 1989, the FCC concluded that for ILECs to be able to file such tariffs:

"would mean that when an impasse is reached, the landline company could proceed unilaterally to file its tariffs, thereby rendering meaningless the negotiations already conducted on this matter."

4 FCC Rcd, at 2370-71, ¶14.

Moreover, the Telecommunications Act of 1996 is replete with requirements that ILECs must negotiate in good faith with other carriers concerning their interconnection arrangements. As the Petitioners also note, pursuant to Section 251(a) of the Act [47 U.S.C. Section 251(a)] all carriers are required to interconnect

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<sup>2</sup> See Second Radio Common Carrier Order, 2 FCC Rcd 2910, 2916, ¶56 (1987); Third Radio Common Carrier Order, 4 FCC Rcd 2369, 2370-71, ¶¶13-14 (1989).

with other carriers and under Section 251(b)(5) of Act [47 U.S.C. Section 251(b)(5)], LECs are required "to establish reciprocal compensation arrangements for the transport and termination of telecommunications." Section 251(c)(1) [47 U.S.C. Section 251(c)(1)] imposes on LECs a "duty to negotiate in good faith" with wireless carriers and others to reach such interconnection agreements.

Finally in both its regulations<sup>3</sup> and prior orders<sup>4</sup> the FCC has recognized that wireless and wireline carriers must negotiate their interconnection arrangements and that the tariff process cannot serve as a means of avoiding ILEC obligations to adhere to the negotiation process created by the 1996 Act.

The fundamental mistake, or confusion, of the ILECs in this controversy is their evident belief that CMRS carriers can and should be made to pay the equivalent of access charges for interconnection rather than both parties having to pay reciprocal compensation charges, under which the "TELRIC" pricing methodology must govern.<sup>5</sup>

As the FCC noted in adopting its "Local Competition Order" following passage of the Telecommunications Act of 1996 access charges and local charges are legally separate and distinct and serve different purposes:

"[T]ransport and termination of local traffic are different services than access services for long distance telecommunications. Transport and termination of local traffic for the purposes of reciprocal compensation

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<sup>3</sup> See Section 20.11(a) and (b) of the Commission's Rules, which require that LECs must provide the "type of interconnection reasonably requested by a mobile service licensee" and that LECs and wireless carriers must "comply with the principles of mutual compensation." Those principles are incompatible with the state tariffs in question here.

<sup>4</sup> See Bell Atlantic v. Global NAPS 15 FCC Rcd 12946, 12959 ¶23 (1999) aff'd on recon. 15 FCC Rcd 12946 (2000), aff'd sub. nom. Global NAPS, Inc. U. FCC, 247 F.3d 252 (D.C. Cir. 2001) ("using the tariff process to circumvent Section 251 and 252 processes cannot be allowed").

<sup>5</sup> See Verizon Communications v. FCC, 122 S.Ct. 1646 (2002).

are governed by Sections 201 and 202 of the Act. The Act preserves the legal distinctions between charges for transport and termination of local traffic and interstate and intrastate charges for terminating long-distance traffic."<sup>6</sup>

As the FCC has repeatedly reiterated since then, reciprocal compensation principles must govern the relationship where "local" (intra-MTA) calls are involved. As the FCC stated in 2001:

"The Local Competition Order held 'that the new transport and termination rules should be applied to LECs and CMRS providers so that CMRS providers continue not to pay interstate access charges for traffic that currently is not subject to such charges, and are assessed such charges for traffic that is currently subject to interstate access charges.' LEC-CMRS traffic interconnection for calls that originate and terminate in the same MTA (as of the start of a call) are governed by Section 251, and are subject to reciprocal compensation. Two common types of local LEC-CMRS interconnection include: connection through a LEC (typically an ILEC) end office (Type 1) and direct mobile switching center (MSC) connection with a LEC tandem (Type 2A).<sup>7</sup> (notes omitted) (emphasis added)

Given these clear standards, the LEC tariff policy cannot stand and the FCC should issue the requested declaratory ruling reiterating the requirements of the Act in this context.

Also, apart from lawfulness of such tariffs, their terms are fundamentally unfair and contrary to the principles of sound public policy. As is noted in the Petition (pp 5-6), such tariffs: (1) are one-sided in that they require CMRS carriers to pay LECs for termination but do not provide for reciprocal payments to CMRS carriers; (2) include costs, such as "non-traffic sensitive loop costs" which are not properly recoverable in a reciprocal compensation arrangement; and (3) authorize

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<sup>6</sup> See Local Competition First Report and Order, 11 FCC Rcd 15499, 16012-16013 ¶1033 (1996).

<sup>7</sup> In the Matter of Developing a Unified Inter-carrier Compensation Regime. Notice of Proposed Rulemaking, 16 FCC Rcd 9610, 9642, ¶91 (2001).

the ILECs to block mobile-to-land traffic if the CMRS carriers do not pay their exorbitant and unlawful charges, thus depriving both wireless customers and their own customers of service.

## II. USCC's Experience Has Been Comparable To That of The Petitioners In Missouri

USCC serves two Missouri MSA markets, the Joplin and Columbia MSAs, and all or part of eight RSA markets (Missouri RSAs 3, 5, 6, 11, 13, 15, 16, and 17).

USCC's practice in that state, as elsewhere, is to adopt a "bill and keep" interconnection arrangement with ILECs, CLECs and other wireless carriers until it has a PUC-approved negotiated interconnection agreement with a given carrier in place.

USCC's experience with the ILECs filing "termination tariffs" has been similar to that of the Petitioners. That is, with no prior notice of the existence of the tariffs, USCC suddenly began receiving bills from 27 ILECs based on their termination tariffs. Three other Missouri ILECs have begun billing USCC at their "terminating access" rates for calls which are indisputably local in nature under the FCC's rules.<sup>8</sup>

Further all the Missouri ILECs charging "tariffed" and/or "access" rates refuse to acknowledge that most of the calls in question are local in nature and have asserted their right to receive full payment.

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<sup>8</sup> USCC has paid the tariff charges under protest but has refused to pay the "terminating access" charges.

USCC has had to hire local counsel to contest these unlawful tariffs and charges and has also had to spend much managerial time to deal with these issues before the Missouri PUC.

It is urgent that the FCC focus on and solve this problem before it becomes national in scope.

USCC acknowledges the need for a comprehensive review of wireless/wireline interconnection issues. However, in the interim, the Commission must ensure that its existing rules and policies are adhered to.

Conclusion

For the foregoing reasons and those given by the Petitioners, their request for declaratory ruling should be granted.

Respectfully submitted,

UNITED STATES CELLULAR  
CORPORATION

By /s/ Peter M. Connolly  
Peter M. Connolly

Holland & Knight LLP  
2099 Pennsylvania Avenue, N.W. #100  
Washington, DC 20006  
(202) 862-5989

Its Attorney

October 18, 2002

WAS1 #1129453 v1